



ELECTRICITY INDUSTRY ACT 2000
APPLICATION FOR A GENERATION LICENCE

LAVERTON NORTH POWER PTY LTD
(ACN 094 248 156)

DECISION

2 October 2002

SUMMARY

Pursuant to section 19 of the *Electricity Industry Act 2000* (the EI Act) the Essential Services Commission (the Commission) has decided to grant Laverton North Power Pty Limited ACN 094 248 156 (the applicant) a licence to generate electricity for supply or sale in Victoria.

BACKGROUND

Requirement to obtain a licence

1. Section 16 of the EI Act provides that a person must not engage in the generation of electricity unless the person is -
 - the holder of a licence authorising that activity; or
 - exempted from the requirement to obtain a licence in respect of that activity.
2. The applicant has not been exempted from the requirement to obtain a licence.

Entitlement to apply for a licence

3. Section 18 of the EI Act provides that a person may apply to the Commission for a licence authorising one or more of the following activities as are specified in the licence -
 - (a) to generate electricity for supply or sale;
 - (b) to transmit electricity;
 - (c) to distribute or supply electricity;
 - (d) to sell electricity;

The applicant

4. The applicant is Laverton North Power Pty Limited (ACN 094 248 156).
5. The applicant is a company incorporated in Victoria and a wholly owned subsidiary of Singapore Power International (SPI), a Singaporean corporation that owns SPI PowerNet which already holds a licence to transmit electricity in Victoria.
6. The applicant's proposed power station in Laverton North, Melbourne is a gas turbine project with generating capacity of 270MW. The generator will be connected to the SPI PowerNet transmission system and will sell generation output into the National Electricity Market. The construction of the plant is expected to begin by the end of 2002 with commissioning of operating units planned to commence within the first quarter of 2004.

The application

7. On 6 December 2001 the applicant formally applied for a licence to generate electricity for supply and sale in Victoria. The applicant provided the Commission with an attachment in support of the application. The attachment contained details of the applicant's background, structure, experience in the energy industry, operating and financial capabilities and profiles of the directors.
8. The attachment also included a statement of the applicant's ability to comply with all applicable codes and regulations upon the granting of the generation licence.

Advertising the application

9. Section 19(6) of the EI Act provides that the Commission must publish a notice in a daily newspaper generally circulating in Victoria specifying that the application has been lodged and inviting interested persons to make submissions to the Commission in respect of the application within a period and in a manner specified in the notice.
10. The Commission complied with the requirements of section 19(6) of the EI Act by publishing a notice in *The Age* on Monday, 17 December 2001. The advertisement invited interested persons to make submissions to the Commission in respect of the application by 25 January 2002.
11. The Commission did not receive any submissions in respect of the application.

Provisions relating to the Commission's decision

12. Section 19(1) of the EI Act provides that, subject to sub-sections (2) and (3) the Commission may grant or refuse the application for any reason it considers appropriate, having regard to the objectives of the Commission under the EI Act and under the *Essential Services Commission Act 2001* (the ESC Act).
13. The objectives specified under section 10 of the EI Act are -
 - (a) to the extent that it is efficient and practicable to do so, to promote a consistent regulatory approach, between the electricity industry and the gas industry; and
 - (b) to promote the development of full retail competition.
14. Section 8 of the ESC Act provides that –
 - (a) In performing its functions and exercising its powers, the primary objective of the Commission is to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services.
 - (b) In seeking to achieve its primary objective, the Commission must have regard to the following facilitating objectives:
 - (i) To facilitate efficiency in regulated industries and the incentive for efficient long-term investment;
 - (ii) To facilitate the financial viability of regulated industries;
 - (iii) To ensure that the misuse of monopoly or non-transitory market power is prevented;

- (iv) To facilitate effective competition and promote competitive market conduct;
- (v) To ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry;
- (vi) To ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency;
- (vii) To promote consistency in regulation between States and on a national basis.

15. Section 19(2) of the EI Act provides that the Commission must not grant an application for a generation licence unless the Commission is satisfied that subject to sub-section (4) the applicant has the technical capacity to comply with the conditions of the licence.

Section 19(4) provides that –

The Commission does not have to be satisfied as to the applicant's technical capacity to comply with the conditions of the licence at the time it is issued if –

- (a) the activities specified in the licence are not likely to be commenced to be carried out within the next following 12 months; and
- (b) the application is granted subject to such conditions as are determined by the Condition relating to further approval of the applicant's technical capacity or approval of future facilities necessary for the carrying out of the activities.

CONSIDERATION OF THE APPLICATION

General approach

16. A decision to grant a generation licence to a new market entrant has the potential to promote competition in the generation, supply and sale of electricity and, accordingly, to promote efficiency and economy in those activities.
17. Accordingly, consistent with its objectives under the Act, the Commission is of the view that unless there are good reasons to the contrary, its approach should be to grant a licence to an applicant. The principal grounds on which the Commission might refuse an application would be to protect the interests of customers, or if it believed that the licensee did not have the technical capacity to comply with the conditions of the licence.

ISSUES

Technical capacity

18. The degree of technical capacity required to be demonstrated to satisfy the Commission in terms of section 19(2) of the Act varies according to the nature of the licence to be issued. Applicants for a generation licence, for example, which are involved in the physical supply of electricity, are required to demonstrate a different technical capacity than do applicants for a retail licence.
19. The applicant has provided particulars in its application of its technical capacity to comply with the conditions of the licence. The applicant is a wholly owned subsidiary of Singapore Power International, which specialises in the development, construction, management and operation and marketing of global power production facilities. SPI is one of the largest developers of independent power projects in Asia. At 31 December 2001 SPI, had investments in generation and co-generation projects totalling 2,700 MW of generation of which its share was 866 MW of generation capacity. SPI also has 100% controlling interest in SPI PowerNet, the transmission service provider in Victoria.
20. The applicant's Laverton North Power Station will be operated as a stand alone unit under the management of SPI in Singapore. A new Operations Manager, based in Melbourne will be responsible for all operational, commercial and regulatory matters concerning Laverton North Power Station. The applicant will also utilise the worldwide technical expertise and technological capability of Singapore Power International. The information provided in the application indicates that the directors of the applicant have significant energy industry experience.
21. The applicant plans to register with the National Electricity Market Management Company as an intending participant of the National Electricity code and upon issuance of the generation licence will seek registration with NEMMCO as a market generator prior to the commissioning of the plant.

Compliance with Codes and Rules

22. Victorian electricity generation licences require licensees to comply with all applicable provisions of the Distribution Code and the System Code.
23. The Commission notes that generation licences also include a requirement to comply with all relevant laws, and that issuing this licence would not relieve the applicant of the obligation to meet the Environmental Protection Authority's emissions and other requirements.
24. On 15 January 2002 Laverton North Power Complex was granted a works approval by the Environmental Protection Authority.

Cross-ownership

25. SPI PowerNet, a related body corporate of Laverton North Power Pty Limited, already holds a Victorian transmission licence. This could raise issues under the cross-ownership provisions of the EI Act.
26. Section 68(1) of the EI Act provides that it is unlawful for a person to hold a prohibited interest. Section 68(2)(a) of the EI Act provides that, subject to sub-sections (8A), a person holds prohibited interest if a licensee has a controlling interest in one or more other licensees.
27. Sub-section (8A) provides that a person does not hold a prohibited interest under section 68(2) by reason only of holding an interest in a generation company if –
 - (a) the Commission has determined that it is satisfied that the generation company has established, or proposes to establish, a new facility for the generation of electricity for supply or sale; and
 - (b) the Commission has issued a licence to the generation company in respect of the generation of electricity at the new facility; and
 - (c) the person has held the interest from the time that the licence for the new facility was issued; and
 - (d) the generation company is only licensed to generate electricity for supply or sale at –
 - (i) the new facility; and
 - (ii) any other facility in respect of which a determination has been made under paragraph (a).
28. The Commission has made a separate determination under section 68(8A)(a) of the EI Act that the applicant proposes to establish a new generation facility. A copy of the determination forms an attachment to this decision.
29. A condition of the licence to be issued to the applicant by the Commission is that the applicant generates electricity at the new facility. The issuing of a licence to the applicant containing such a licence condition and the making of the determination under section 68(8A)(a) of the EI Act satisfy the requirements of section 68(8A) that the applicant does not hold a prohibited interest.

Licence conditions

30. As noted above SPI PowerNet and the applicant are related companies. The applicant will have a connection agreement with SPI PowerNet for connection into the transmission system. This relationship might raise concerns regarding the potential for a related company to receive preferential treatment from SPI PowerNet in terms of price and/or conditions for connection.
31. The Australian Competition and Consumer Commission has published Transmission Ring-Fencing Guidelines which require a transmission network service provider to comply from 1 November 2002 with the ring-fencing obligations set out in the

guidelines. The ring-fencing guidelines provide that a transmission network service provider (including SPI PowerNet) must not make decisions or act in a manner that discriminates in favour of a related company in relation to the terms and conditions for the provision of its ring-fenced services, which include connection agreements.

32. To prevent potential concerns of preferential treatment of a related company from arising and to enable identification of non-compliance with the Transmission Ring-Fencing Guideline the Commission has included a condition in the applicant's generation licence that will require the applicant to publish the terms and conditions of the connection agreement with SPI PowerNet. The applicant is also required to publish any amendments or variations to the published connection agreement.

DECISION

33. The Commission is satisfied that -
- the applicant has the technical capacity to comply with the conditions of the licence to be granted; and
 - the granting of a licence would not be inconsistent with the EI Act.
34. Having regard to the objectives specified in section 10 of the *Electricity Industry Act 2000* and section 8 of the *Essential Services Commission Act 2001*, the Commission has decided to grant the application for the issue of a generation licence to Laverton North Power Pty Limited (ACN 094 248 156). A copy of the licence forms an attachment to this decision.

THE COMMON SEAL of)
THE ESSENTIAL SERVICES)
COMMISSION
 was affixed pursuant)
 to the authority of the Commission on)
 2 October 2002.)

JOHN C TAMBLYN
Chairperson